

Before the
Administrative Hearing Commission
State of Missouri

MISSOURI REAL ESTATE)	
COMMISSION,)	
)	
Petitioner,)	
)	
vs.)	No. 13-1574 RE
)	
MAI NGOC LE-TAN,)	
)	
Respondent.)	

DECISION

Mai Ngoc Le-Tan's real estate salesperson license is subject to discipline because she failed to remit money that belonged to others in a reasonable time, she converted funds belonging to other people to her own use, and she lacks good moral character.

Procedure

On September 4, 2013, the Missouri Real Estate Commission (MREC) filed a complaint seeking to discipline Le-Tan. On October 3, 2013, Le-Tan filed an answer. On April 2, 2014, we convened a hearing. The MREC was represented by Assistant Attorney General Edwin R. Frownfelter. Le-Tan appeared in person and by counsel, Conrad Miller, Jr. The case became ready for decision on September 5, 2014, the date the last written argument was filed.

Commissioner Karen A. Winn, having read the full record including all the evidence, renders the decision of the Commission. Section 536.080.2, RSMo 2000¹; *Angelos v. State Bd. of Regis'n for the Healing Arts*, 90 S.W.3d 189 (Mo. App. S.D. 2002).

¹ Statutory references are to the Revised Statutes of Missouri, RSMo Supp. 2013, unless otherwise noted.

Findings of Fact

1. Le-Tan holds a Missouri real estate salesperson license, first issued on July 22, 2008. It was current and active at all relevant times.
2. Prior to February 28, 2011, Le-Tan was associated with supervising broker Yuri Ives.
3. On February 28, 2011, Ives was murdered.
4. Le-Tan went to Ives' house after he was murdered. She assisted in cleaning and organizing his papers, and put some of them in boxes.
5. Prior to Ives' death, he represented Marhani Abuu Haagi in his effort to purchase an investment property.
6. In August 2010, Haagi gave Ives four money orders for \$500 apiece as earnest money on the investment property. The payee on the money orders was left blank.
7. Haagi's offer on the investment property was not accepted.
8. Ives never deposited the money orders into a trust account or with an escrow agent, nor did he return them to Haagi.
9. Le-Tan had no professional relationship with Haagi, nor was she familiar with the transaction for which he had given Ives the money orders.
10. On March 7, 2011, Le-Tan filled in her name as payee on two of the money orders and cashed them at Bank of America.
11. Prior to his death, Ives had been representing Omar A. Mohamed as a buyer's agent in an attempt to purchase property at 1315 East Peery Avenue in Kansas City, Missouri. The seller's agent was Julie Curtis of T.J. Mclaury Real Estate.

12. Mohamed provided a cashier's check dated October 12, 2010, to Ives in the amount of \$1,800 made payable to "Mclaury Real Estate" ("the cashier's check"). The instrument was provided as earnest money for an offer on the East Peery Avenue property.

13. Mohamed's offer on the East Peery Avenue property was not accepted, and the check was never delivered to T.J. Mclaury Real Estate. Ives did not return the cashier's check to Mohamed before his death.

14. Le-Tan had no professional relationship with Mohamed or T.J. Mclaury Real Estate and was not familiar with the transaction for which Mohamed had given Ives the cashier's check.

15. On March 9, 2011,² Le-Tan, through her husband Andy Tan, incorporated an entity under the name of Le Mclaury Real Estate Mgmt, LLC, by filing Articles of Organization with the Missouri Secretary of State.

16. On March 11, 2011, Le-Tan opened an account in the name of Le Mclaury at Bank of America, and on March 15, 2011, she endorsed and deposited the cashier's check into that account. She later transferred the \$1,800 to another account in the name of Le Mclaury, also at Bank of America.

Conclusions of Law

We have jurisdiction to hear the MREC's complaint. Sections 339.100.2 and 621.045. The MREC has the burden of proving, by a preponderance of the evidence, that Le-Tan has committed an act for which the law allows discipline. *Missouri Real Estate Comm'n v. Berger*, 764 S.W.2d 706, 711 (Mo. App. E.D. 1989); *Kerwin v. Mo. Dental Bd.*, 375 S.W.3d 219, 229-30 (Mo. App., W.D. 2012) (dental licensing board demonstrates "cause" to discipline by showing preponderance of evidence). A preponderance of the evidence is evidence showing, as a whole,

² The stipulated facts indicate the filing was made March 11, 2011; however, the Secretary of State's documents reflect the filing occurred on March 9, 2011.

that “the fact to be proved [is] more probable than not.” *Schumer v. Lee*, 404 S.W.3d 443, 448 (Mo. App., W.D. 2013).

This Commission must judge the credibility of witnesses, and we have the discretion to believe all, part, or none of the testimony of any witness. *Dorman v. State Bd. of Registration for the Healing Arts*, 62 S.W.3d 446, 455 (Mo. App., W.D., 2001). Even when credibility is a factor in the case, a Commissioner may decide the case after reading the full record but without hearing the evidence. *Angelos*, 90 S.W.3d at 192-94. Our findings of fact reflect our determination of the credibility of witnesses.

Section 339.100.2 states:

The [MREC] may cause a complaint to be filed with the administrative hearing commission as provided by chapter 621 against any person or entity licensed under this chapter . . . for any one or any combination of the following acts:

(1) Failure to maintain and deposit in a special account, separate and apart from his or her personal or other business accounts, all moneys belonging to others entrusted to him or her while acting as a real estate broker or as the temporary custodian of the funds of others, until the transaction involved is consummated or terminated, unless all parties having an interest in the funds have agreed otherwise in writing;

* * *

(3) Failing within a reasonable time to account for or to remit any moneys, valuable documents or other property, coming into his or her possession, which belongs to others;

* * *

(16) Committing any act which would otherwise be grounds for the commission to refuse to issue a license under section 339.040;

* * *

(19) Any other conduct which constitutes untrustworthy, improper or fraudulent business dealings, demonstrates bad faith or incompetence, misconduct, or gross negligence[.]

Section 339.040, referred to in § 339.100.2(16), sets forth the requirements for licensure and states in part:

1. Licenses shall be granted only to persons who present . . . satisfactory proof to the commission that they:

(1) Are persons of good moral character; and

(2) Bear a good reputation for honesty, integrity, and fair dealing; and

(3) Are competent to transact the business of a broker or salesperson in such a manner as to safeguard the interest of the public.

Subdivision (1) – Failure to Escrow

In its complaint, the MREC claims that cause for discipline exists under this subsection; however, it withdrew the claim based on the acknowledgement that there was no evidence any funds were entrusted to Le-Tan. There is no cause to discipline her license under § 339.100.2(1).

Subdivision (3) – Failure to Account for Moneys

Although many of the facts on the record were stipulated, there was substantial disagreement about how the \$2,800 worth of negotiable instruments came to be in Le-Tan's possession. But how she got them is not the key to our decision as to whether or not she timely remitted funds or returned the instruments that did not belong to her. Le-Tan contends that she and Ives were in the business of flipping houses together and that he owed her substantial sums at the time of his death. She testified that before he died, Ives gave her the money orders in partial payment for that debt and the check made to Mclaury as his share of capital for a real estate joint venture they planned to form. However, she produced no documents evidencing any

debt he owed her or transactions that might have suggested a contribution of funds by Le-Tan to one of Ives' business endeavors. Even if Ives gave Le-Tan the check and the money orders, she should not have accepted them. They were given to Ives by Haagi and Mohamed for specific transactions. Once those transactions fell through, Haagi and Mohamed had a right to recover them. Le-Tan made no effort to return the funds or instruments to their rightful owners after Ives' death. To the contrary, she set about almost immediately after his demise to convert the funds to her own use. Thus, she failed within a reasonable time to account for and remit moneys or documents of value coming into her possession and belonging to another.

In her brief filed after the hearing, Le-Tan argued that she has always been ready and willing to return any amounts that might have belonged to other people. There is no evidence she ever expressed such an intention prior to filing her brief, however, including at the hearing. There is cause to discipline Le-Tan's license under § 339.100.2(3).

Subdivision (19) – Any Other Conduct

The MREC alleges that Le-Tan is subject to discipline under § 339.100.2(19) for “any other conduct which constitutes untrustworthy, improper or fraudulent business dealings, demonstrates bad faith or incompetence, misconduct, or gross negligence[.]” The adjective “other” means “not the same : DIFFERENT[.]” WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 1598 (unabr. 1986). Therefore, subdivision (19) refers to conduct different from that specified in the remaining subdivisions of the statute. We seldom find cause for discipline under this statute because all of the conduct at issue usually falls within the ambit of other subdivisions of § 339.100.2. That is not the case here. Therefore, we examine Le-Tan's conduct under the terms of § 339.100.2(19).

In its brief, the MREC does not contend that Le-Tan's conduct constituted “untrustworthy, improper or fraudulent business dealings,” perhaps because it lacks evidence

that her conduct in converting the negotiable instruments to her own use was in the context of “business dealings.” Instead, it argues only that Le-Tan committed either misconduct or gross negligence. We also find that Le-Tan’s conversion of the negotiable instruments to her own use did not occur in the course of “business dealings.” Accordingly, we do not consider whether it was untrustworthy, improper, or fraudulent.

Misconduct is the intentional commission of a wrongful act. *Grace v. Missouri Gaming Comm’n*, 51 S.W.3d 891, 900 (Mo. App., W.D. 2001). Misconduct means “the willful doing of an act with a wrongful intention[;] intentional wrongdoing.” *Missouri Bd. for Arch’ts, Prof’l Eng’rs & Land Surv’rs v. Duncan*, No. AR-84-0239 (Mo. Admin. Hearing Comm’n Nov. 15, 1985) at 125, *aff’d*, 744 S.W.2d 524 (Mo. App., E.D. 1988). “‘Gross negligence’ in the context of considering the possible revocation of a professional license is defined as, ‘an act or course of conduct which demonstrates a conscious indifference to a professional duty.’” *Kerwin*, 375 S.W.3d at 226, quoting *Duncan*, 744 S.W.2d at 533.

Le-Tan contends that Ives gave her the check made to Mclaury before he died as capital for a joint venture they had agreed to form, and that Ives had chosen the name of Mclaury for the new company. She testified that she had no idea there was an existing company in Kansas City called Mclaury Real Estate, and that she did not know why Ives had chosen the name. After he died, she found the cashier’s check and the money orders when looking through a file. She cashed the money orders and decided to “honor” Ives by proceeding to form the company they had envisioned, using a form of the name they had agreed on before Ives died, and the cashier’s check as the capital for the new company.

This story is not credible. It is apparent that Le-Tan, by using the name “Le Mclaury” to incorporate a business entity and open a bank account under its name, employed a scheme or

artifice to convert those funds to her own use. We conclude that Le-Tan's behavior was purposeful and intentional and not a product of conscious disregard of a professional duty; therefore, it was not gross negligence. We do, however, find that her conduct in setting up a corporation with virtually the same name as the payee on the cashier's check given to Ives by Mohamed was done with the purpose of inducing Bank of America to part with money to which Le-Tan had no lawful claim. We find Le-Tan committed misconduct, which is cause for discipline under § 339.100.2(19).

Subdivision (16) – Commission of Acts Which are Grounds for Refusal

The MREC argues that Le-Tan is subject to discipline under § 339.100.2(16) for committing acts that would otherwise be grounds for it to refuse her a license. Thus, we must consider whether she bears a reputation for honesty, integrity, and fair dealing, and is competent to transact the business of a salesperson in such a manner as to safeguard the interest of the public, and is a person of good moral character.

Reputation means "the estimation in which one is generally held : the character commonly imputed to one as distinct from real or inherent character[.]" WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 1929 (unabr. 1986). It is the "consensus view of many people[.]" *Haynam v. Laclede Elec. Coop.*, 827 S.W.2d 200, 206 (Mo. banc 1992). The MREC presented no evidence as to Le-Tan's reputation.

"Incompetent," as used in a context relating to actual occupational ability, means "the actual ability of a person to perform in that occupation." Section 1.020(9). There is insufficient evidence in the record to judge Le-Tan's competence as a real estate salesperson.

"Good moral character" is honesty, fairness, and respect for the law and the rights of others. *Hernandez v. State Bd. of Regis'n for Healing Arts*, 936 S.W.2d 894, 899 n.1 (Mo. App., W.D. 1997). Whether or not Le Tan held a sincere belief that Ives owed her money from

previous business dealings, her conversion of negotiable instruments that belonged to other people was dishonest and demonstrated a lack of respect for the law and the rights of those other people. We conclude the MREC has carried its burden to show that she lacks good moral character, and is therefore also subject to discipline under § 339.100.2(16).

Summary

Le-Tan is subject to discipline under § 339.100.2 (3), (16), and (19).

SO ORDERED on December 11, 2014.

// Karen A. Winn
KAREN A. WINN
Commissioner